



The Administrative Law Judge denied claimant's request for benefits and found, for preliminary hearing purposes, that the Kansas Workers Compensation Act did not apply to the accidental injury in question. The claimant requests the Appeals Board to review that finding.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the entire record, for purposes of preliminary hearing, the Appeals Board finds, as follows:

Based upon the evidence presented to date, the Administrative Law Judge was correct in his determination that the Kansas Workers Compensation Act is not applicable to an accidental injury sustained by a Kansas resident in the state of Arizona while working pursuant to a contract of employment that was made outside the state of Kansas when the principal place of employment is outside the state of Kansas.

Claimant is a resident of Wichita, Kansas. Respondent is a temporary services employment agency. In January 1993, respondent sent claimant to a temporary job assignment with a company located in San Bernardino, California. While working in this position, the principal contract between the California company and the respondent expired leaving claimant without a job assignment. While still in California, claimant telephoned the respondent to advise that the contract had expired. Respondent thereupon advised claimant that there were job opportunities in Tucson, Arizona if he desired to travel there. Claimant went directly to Arizona from California. On June 15, 1993, while on the temporary job assignment in Arizona, claimant sustained personal injury by accident arising out of and in the course of his work duties.

The claimant has failed to establish that the Kansas Workers Compensation Act is applicable to the alleged work related accident. In proceedings under the workers compensation act, the burden of proof is on the claimant to establish the right to an award of compensation and to prove the various conditions on which the claimant's right depends. In determining whether the claimant has met this burden of proof, the trier of fact shall consider the whole record. K.S.A. 44-501(a).

It is the intent of the legislature that the Workers Compensation Act shall be liberally construed for the purpose of bringing employers and employees within the provisions of the act to provide the protection of the Act to both. The provisions of the Act shall be applied impartially to both employers and employees in cases arising thereunder. K.S.A. 44-501(g). However, this rule does not permit the courts to exercise judicial ingenuity or to stretch the elasticity of language to the point of disregarding the Act's simple unclouded provisions. Everett v. Kansas Power Co., 160 Kan. 712, 716, 165 P.2d 595 (1946). Neither can the courts go beyond the legislature and add what was omitted or change the limitations of the act. Roberts v. City of Ottawa, 101 Kan. 228, 231, 165 Pac. 869 (1917). In short, we are not permitted to enlarge upon the plain terms of the act. Leslie v. Reynolds, 179 Kan. 422, 427, 295 P.2d 1076 (1956).

In the case now before us, K.S.A. 44-506 is controlling. This statute provides that the Kansas Workers Compensation Act shall apply to injuries sustained outside the state where: (1) the principal place of employment is within the state; or (2) the contract of employment was made within the state, unless such contract otherwise specifically provides.

The claimant does not contend that his principal place of employment was within the State of Kansas, and the evidence presented would not support such contention. Regarding the question whether the contract of employment was made within the State of Kansas, the Appeals Board finds that claimant has failed to prove that element. To the contrary, the evidence presented to date would support the conclusion that a new contract of employment was made when claimant telephoned the respondent from California at the termination of the initial work assignment. From the evidence presented the Appeals Board does not relate the second offer for employment in Arizona to a contract of employment made within the State of Kansas.

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that, for preliminary hearing purposes, the preliminary hearing order of Administrative Law Judge John D. Clark dated May 19, 1994, should be, and hereby is, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of August, 1994.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

cc:

Dale V. Slape, Wichita, KS  
Robert A. Bye, Wichita, KS  
John D. Clark, Administrative Law Judge

**EDWARD KRISTEK**

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**DOCKET NO. 187,680**

George Gomez, Director